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## 2006 Decisions

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Opinions of the United  
States Court of Appeals  
for the Third Circuit

3-14-2006

## USA v. Kemp

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NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS  
FOR THE THIRD CIRCUIT

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No. 05-1224

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UNITED STATES OF AMERICA,

v.

ELIJAH SHAHEED KEMP,  
*Appellant*

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On Appeal from the United States District Court  
for the Middle District of Pennsylvania  
(D.C. Criminal No. 03-cr-00321-2)  
District Judge: Honorable Sylvia H. Rambo

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Submitted Under Third Circuit LAR 34.1(a)  
March 9, 2006  
Before: AMBRO, and BECKER, *Circuit Judges* and STAGG, *District Judge*\*  
  
(Filed: March 14, 2006 )

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OPINION

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BECKER, *Circuit Judge*.

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\*The Honorable Tom Stagg, United States District Judge for the Western District of Louisiana, sitting by designation.

Pursuant to a plea agreement, appellant Elijah Shaheed Kemp entered a plea of guilty to felony charges involving the distribution of narcotics. He was sentenced to 92 months imprisonment.

Appellant challenges his sentence under *United States v. Booker*, 543 U.S. 220, 125 S.Ct. 738 (2005). In *United States v. Davis*, 407 F.3d 162 (3d Cir. 2005) (en banc), an opinion relating to the denial of a government petition for rehearing en banc concerning consideration of a *Booker* claim on plain error review, this Court stated that except in limited circumstances we will presume prejudice and direct a remand for re-sentencing where the district court imposed a sentence in the belief that the applicable Sentencing Guidelines were mandatory. That was the situation here, and we perceive no circumstance in this case which warrants a different result from that found in *Davis*.

We will therefore vacate the judgment and remand for re-sentencing.